

**United States Department of Labor
Employees' Compensation Appeals Board**

L.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 16-0334
Issued: May 11, 2016**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 15, 2015 appellant, through counsel, filed a timely appeal from a July 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish permanent impairment of his right lower extremity entitling him to a schedule award.

Appellant, through counsel, contends on appeal that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 5, 2012 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee, hip, and ankle when he stepped in a hole while delivering mail on that date. On April 3, 2012 OWCP accepted his claim for sprain of unspecified sites in the right knee, sprain of hip, right iliofemoral, right ankle sprain, and sprain of the lumbar region of the back. It paid compensation and medical benefits.

By decision dated January 9, 2014, OWCP terminated appellant's medical and compensation benefits, effective January 11, 2013, as appellant no longer had any residuals related to his January 5, 2012 employment injury. Appellant requested a hearing before an OWCP hearing representative. In a decision dated September 30, 2014, the hearing representative affirmed the termination of benefits and found that appellant had not provided evidence to warrant reinstatement of those benefits or for further development of the evidence.

On April 13, 2015 appellant filed a claim for a schedule award (Form CA-7). In support of his claim, he submitted a March 13, 2015 note from Dr. Venkat R. Rapuri, a Board-certified orthopedic surgeon, found that appellant had reached maximum medical improvement.

By letters dated April 20, 2015 (letter returned by post office) and June 24, 2015, OWCP requested that appellant submit additional medical evidence in support of a schedule award. Appellant was afforded 30 days to submit this additional evidence. No response was received.

By decision dated July 24, 2015, OWCP denied appellant's claim for a schedule award, finding that the submitted evidence was not sufficient to establish permanent impairment to a scheduled member resulting from the employment injury.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th edition 2009) ("A.M.A., *Guides*") has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁵

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013; *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010)).

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.⁶ It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.⁷ OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred. An impairment description must be in sufficient detail so the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁸

ANALYSIS

OWCP accepted appellant's claim for sprain of unspecified sites of the right knee; sprain of the hip, right iliofemoral; right ankle sprain; and sprain of the lumbar region of the back. It paid compensation and medical benefits, but terminated these benefits effective January 11, 2013 for the reason that appellant no longer had any residuals related to the accepted January 5, 2012 employment injury.

On April 13, 2015 appellant filed a claim for a schedule award. OWCP procedures and Board precedent provide that termination of a claim for all benefits due to a finding of no residuals of the accepted condition does not bar a subsequent schedule award. Rather the claims examiner should consider the schedule award matter separately from the termination of benefits.⁹ This is because a claimant may have an employment-related condition that results in a permanent impairment under the A.M.A., *Guides* without any disability for work or the need for continuing medical treatment.¹⁰ If a claimant applies for a schedule award after termination and submits sufficient medical evidence reflecting a permanent impairment as a result of the work-related injury exposure, the claims examiner should develop the claim further, even if a finding of no residuals has previously been made.¹¹

To support a schedule award, the file must contain competent medical evidence that shows that the impairment has reached maximum medical improvement and the date this occurred, describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability, and gives a percentage of impairment based on a specific diagnosis.¹² If a claimant requests a schedule award, but has not submitted such evidence, the claimant should be requested to submit it.¹³ If the claimant does not provide an impairment

⁶ *G.E.*, Docket No. 09-1412 (issued February 17, 2010).

⁷ *Tammy L. Meehan*, 53 ECAB 130 (2001).

⁸ *C.A.*, Docket No. 13-762 (issued April 1, 2014).

⁹ See *B.K.*, 59 ECAB 228 (2007); Federal (FECA) Procedure Manual Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.11 (February 2013).

¹⁰ *B.K.*, *id.*

¹¹ *Supra* note 9 at Chapter 2.808.11(a) (February 2013).

¹² *Id.* at Chapter 2.808.5(b).

¹³ *Id.* at Chapter 2.808.6(a).

evaluation from his physician when requested, and there is no indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award. If in doubt, the claims examiner should obtain an opinion from an OWCP medical adviser prior to such a denial.¹⁴

The only evidence appellant submitted in support of his schedule award claim was a note wherein Dr. Rapuri found that appellant had reached maximum medical improvement. This evidence does not address any impairment or give any information to visualize the character and degree of disability. Accordingly, appellant has not established a schedule award. Thus, has not met his burden of proof.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish permanent impairment of his right lower extremity entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2015 is affirmed.

Issued: May 11, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *Id.* at Chapter 2.808.6(c).